

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:

MIDNIGHT MADNESS DISTILLING LLC,

Debtor.

CHAPTER 7

Case No. 21-11750-MDC

**BONNIE B. FINKEL, in her capacity as Chapter 7
Trustee for Midnight Madness Distilling LLC,**

Plaintiff,

v.

**CASEY PARZYCH; SHAWN SHEEHAN; ANGUS
RITTENBURG; KELLY FESTA; ASHLEIGH
BALDWIN; MICHAEL BOYER; R.F.
CULBERTSON; GARY PARZYCH; RYAN
USZENSKI; POLEBRIDGE, LLC; GOOD
DESIGN, INC.; AGTECH PA LLC; AGTECH VI,
LLC; XO ENERGY WORLDWIDE, LLLP; XO
EW, LLC; CAN MAN LLC; BEST BEV, LLC;
ETOH WORLDWIDE, LLC; CANVAS 340, LLC;
FINLAND LEASING CO., INC.; and EUGENE T.
PARZYCH, INC.,**

Defendants.

Adv. No. 23-00047-MDC

**OBJECTION OF CHAPTER 7 TRUSTEE TO
DEFENDANTS' MOTION FOR EXPEDITED HEARING**

Plaintiff Bonnie B. Finkel, in her capacity as Chapter 7 Trustee (the “Trustee” or “Plaintiff”) for Midnight Madness Distilling LLC f/k/a Theobald and Oppenheimer, LLC d/b/a Faber Distilling (the “Debtor”), by and through her undersigned counsel, hereby objects (the “Objection”) to the *Application of Moving Defendants for an Order Scheduling Expedited Hearing Pursuant to Local Bankruptcy Rule 5070-1 on Moving Defendants’ Emergency Motion*

for an Order Staying Proceedings And/Or For Other Related Relief [Adv. D.I. No. 7] (the “Expedited Hearing Motion”). In support of her Objection, the Trustee states as follows.

1. The Moving Defendants¹ seek to ambush the Trustee with a hearing with less than two days’ notice due to a so-called “emergency” of their own making. As set forth in detail herein, the Expedited Hearing Motion Should be denied.

2. On June 15, 2023, the Trustee filed her complaint in the above-captioned adversary proceeding [Adv. D.I. No. 1], asserting claims against the Moving Defendants as well as a group of Additional Defendants.²

3. On June 16, 2023, the Court issued the Summons, which set a due date of July 17, 2023 for the filing of answers or motions (the “Answer Date”). *See* [Adv. D.I. No. 2].

4. Plaintiff promptly served the Summons and Complaint on all defendants the very same day. *See* [Adv. D.I. No. 3] (Certificate of Service establishing service on all defendants via “Regular, first class Unites States mail, postage pre-paid”).

5. On July 6, 2023, Plaintiff’s counsel was contacted by Matthew A. Hamermesh, Esquire, who represented that he would be representing some of the defendants and requested an extension of 30 days for all defendants to respond to the Complaint. Plaintiff responded that she would be amenable to such an extension if defendants agreed, inter alia, that a commensurate extension be granted to respond to any motions under Fed. R. Civ. P. 12. Current counsel for the Moving Defendants, Stephen M. Packman, Esquire, responded that Plaintiff’s proposal was

¹ The Moving Defendants are: Casey Parzych; Shawn Sheehan; Angus Rittenburg; Kelly Festa; Ashleigh Baldwin; Michael Boyer; R.F. Culbertson; Polebridge LLC; Good Design, Inc.; AgTech PA LLC; AgTech VI, LLC; XO Energy Worldwide, LLP; XO EW, LLC; Best Bev, LLC; Etoh Worldwide, LLC; and Canvas 340, LLC.

² The Additional Defendants are: Gary Parzych; Ryan Uszenski; Can Man, LLC; Finland Leasing Co., Inc.; and Eugene T. Parzych, Inc.

acceptable, thus extending the Answer Date to August 16, 2023. *See* Exhibit A (email exchange among counsel establishing terms of extension).

6. On July 21, 2023, current counsel for the Moving Defendants contacted undersigned counsel and sought a further extension of the Answer Date on behalf of all defendants to August 30, 2023, which undersigned counsel agreed to. *See* Exhibit B (email exchange establishing further extension).

7. On August 10, 2023, Plaintiff's counsel was contacted by counsel for the Additional Defendants, who requested a further extension of the Answer Date to September 15, 2023, which was granted. Counsel for the Moving Defendants requested a commensurate additional extension, which was also granted. *See* Exhibit C (email exchange establishing additional extension).

8. In the same August 10, 2023 email, counsel for the Additional Defendants suggested that the Trustee agree to transfer the case to the District Court, a suggestion which the Trustee declined. *See* [Adv. D.I. No. 5-3] (August 10, 2023 email from Steven Coren, Esquire: "We have considered the venue issue and wish to keep the matter in bankruptcy court until it is ready for a jury trial").

9. Nearly a full month later, the Moving Defendants filed the Expedited Hearing Motion at 10:46 PM on September 5, 2023, seeking a hearing in well under 48 hours on their so-called "emergency" *Motion to Stay* [Adv. D.I. No. 6] pending disposition of their *Motion for Withdrawal of Reference* [Adv. D.I. No. 5].

10. Despite having their Answer Date extended three times, with Plaintiff providing all defendants with over ninety days to respond to the Complaint, the Moving Defendants characterize the Answer Date they negotiated as causing "substantial prejudice."

11. The Court should not condone such gamesmanship and it is the Trustee that would be prejudiced by being forced to respond in well under 48 hours to the *Motion to Stay*. As will be set forth in detail at the proper time, Plaintiff opposes the *Motion to Stay* because she has granted all defendants ample time to respond, this Court is well suited to handle litigation of this nature prior to a jury trial, and, should the District Court grant the Motion for Withdrawal of Reference, all pleadings and discovery which occurred in this Court will not be wasted, but will simply transfer to the District Court.

Dated: September 6, 2023

/s/ Andrew J. Belli
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Counsel for Plaintiff
Bonnie Finkel, Chapter 7 Trustee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on September 6, 2023, he caused a true and correct copy of the foregoing Objection to Motion for Expedited hearing to all parties in the above-captioned adversary proceeding via the Court's CM/ECF system.

Dated: September 6, 2023

/s/ Andrew J. Belli
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